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JEFFREY MARC HERMAN
1800 N. Military Trail
Suite 160
Boca Raton, FL 33431

O., J.

The Roman Catholic Diocese of Rochester
DePaul Adult Care Communities, Inc.

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
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ADAM J BELLO

MONROE COUNTY CLERK



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X

J.O.,

Plaintiff,

COMPLAINT

-against-

THE ROMAN CATHOLIC DIOCESE OF
ROCHESTER, a/k/a THE MOST REV.
SALVATORE RONALD MATANO, as Bishop and
Corporate Sole of the DIOCESE OF ROCHESTER,
DEPAUL ADULT CARE COMMUNITIES, INC.
(FORMERLY KNOWN AS THE DEPAUL
MENTAL HEALTH SERVICES, INC.),

Index No. _____

Defendants.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, J.O., by and through undersigned counsel, respectfully shows to this Court and
alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-
g. The Plaintiff, when he was a minor, was sexually assaulted by a staff member of DePaul Adult
Care Communities, Inc. f/k/a The DePaul Mental Health Services, Inc., formerly operated by the
Diocese of Rochester.

Parties, Jurisdiction and Venue

1. Plaintiff, J.O., is a citizen and resident of the State of New York. Plaintiff brings
this Complaint using his initials because of the sensitive nature of the allegations of child sexual
abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment

and further psychological damage if his identity as a victim of child sexual abuse were to become publicly known. His identity will be made known to Defendant, at the latest, upon service of the Summons and Complaint.

2. Defendant, Diocese of Rochester, and Salvatore Ronald Matano as Bishop and Corporate Sole of the Diocese of Rochester (hereafter, the “Diocese”) is a religious institution and organization with principal offices located at 1150 Buffalo Rd, Rochester, NY 14624. The Diocese of Rochester controls all Catholic religious, pastoral and educational functions in 12 counties in New York, with approximately 125 faith communities (parishes and chapels), 22 diocesan elementary schools and 7 independent parochial high schools. At all relevant times, Defendant Diocese of Rochester operated, managed and owned the DePaul Adult Care Communities, Inc.

3. Defendant, DePaul Adult Care Communities, Inc. f/k/a The DePaul Mental Health Services, Inc. (“DePaul”) is located at 1931 Buffalo Road Rochester, NY 14624.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants Diocese and DePaul as they are present and domiciled in the State of New York.

6. Venue of this action lies in Monroe County as a substantial part of the events or omissions giving rise to the claim occurred in Monroe County or one of the Defendants resides in Monroe County.

Facts of Sexual Abuse

7. Plaintiff became an orphan at the age of five when he lost both his parents. For the following eleven years, Plaintiff was assigned to an orphanage and several foster homes until he petitioned the court for emancipation at the age of sixteen.

8. Plaintiff was referred by a social worker to the DePaul youth program at the age of sixteen located in the Wellington Group Home, operated and managed by DePaul. The program was created and designed to assist children aging out of the foster care system in gaining independence.

9. While Plaintiff participated in the youth program at DePaul, Dan Charcholla was the Director of Recreation. During the two years Plaintiff resided at the Wellington Group Home, Dan Charcholla violently sexually abused Plaintiff regularly.

10. The sexual and physical abuse consisted of piercing his nipples, sodomy, beating him violently with a bat while sexually assaulting him, and tying Plaintiff with straps and chains or handcuffing him while brutally sexually abusing him. Dan Charcholla also forced Plaintiff to have sex with other boys at the facility.

11. Dan Charcholla kidnapped Plaintiff for a week and held him in his home where he sexually abused him continuously.

12. Doug Kavanaugh, an intern at DePaul, witnessed the sexual abuse and failed to report the incidents. Soon after, Doug Kavanaugh also sexually abused Plaintiff. Upon information and belief, Doug Kavanaugh became a registered sex offender after being convicted in an unrelated case.

13. When Dan Charcholla violently attacked Plaintiff over his head with a baseball bat after he refused to perform oral sex and threatened to report him, Plaintiff was severely injured. Dan Charcholla knocked the side of Plaintiff's head with a baseball bat and sodomized him with the bat causing bleeding to his head and rectum. Plaintiff lost consciousness.

14. Plaintiff underwent emergency surgery after the violent sexual attack by Dan Charcholla. Dan Charcholla reported to DePaul that he found Plaintiff injured in the facility gym

from a fall. Plaintiff, fearful of retaliation by Dan Charcholla, did not disclose Dan Charcholla's sexual abuse. DePaul did not investigate the incident further.

15. Soon after Plaintiff returned to DePaul from the hospital, Dan Charcholla went off property with Plaintiff and threatened Plaintiff's life. Dan Charcholla showed Plaintiff the bat he beat him and sodomized him with. The bat was still covered in Plaintiff's blood.

16. Dan Charcholla continued to sexually abuse Plaintiff on five or six more occasions. Dan Charcholla made Plaintiff undress, made him fondle himself, and squeezed and pierced Plaintiff's nipples with unsterilized pins until they discharged causing an infection. He also aggressively forced Plaintiff to perform oral sex.

17. While Dan Charcholla abused Plaintiff, Plaintiff asked staff member, Mike Knope, to allow him to speak with administration to disclose the sexual abuse by Dan Charcholla. Plaintiff was denied the opportunity to speak with administration.

18. During the sexual abuse, Plaintiff told his resident group home counselor, Barbara Austin, that he was suicidal. Barbara Austin never inquired as to why he made this statement and failed to investigate or protect Plaintiff from what was causing him mental and emotional distress. An hour later, Plaintiff attempted to commit suicide by ingesting over the counter drugs.

19. Plaintiff lost consciousness and was taken to the emergency room at St. Mary's Hospital where he was treated and remained in the hospital for approximately two weeks.

20. Upon information and belief, Dan Charcholla was at all relevant times a serial sexual predator who sexually abused multiple boys over a period of decades. Nevertheless, upon information and belief, Dan Charcholla is still employed at DePaul.

21. At all relevant times, the Diocese and DePaul knew or in the exercise of reasonable care should have known that Dan Charcholla had a propensity for the misconduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

22. At all relevant times, it was reasonably foreseeable to the Diocese and DePaul that Dan Charcholla would commit acts of child sexual abuse or assault on a child.

23. At all relevant times, Diocese and DePaul knew or should have known that Dan Charcholla was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

24. With such actual or constructive knowledge, the Diocese and DePaul provided Dan Charcholla unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of violent child sexual abuse.

Nature of Conduct Alleged

25. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

26. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that the Diocese and DePaul acted with reckless disregard

for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Dan Charcholla, to retain Dan Charcholla with unfettered access to children.

COUNT I
NEGLIGENCE
(against DePaul)

26. Plaintiff repeats and realleges Paragraphs 1 through 25 above.

27. At all material times, DePaul and Plaintiff were in a special relationship in which DePaul owed Plaintiff a duty of reasonable care.

28. At all material times, DePaul and Dan Charcholla were in a special relationship of employer – employee, in which DePaul owed a duty to control the acts and conduct of Dan Charcholla to prevent foreseeable harm.

29. DePaul owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of DePaul. DePaul's duties encompassed the retention and supervision of Dan Charcholla and otherwise providing a safe environment for Plaintiff.

30. DePaul breached these duties by failing to protect the minor J.O. from sexual assault and lewd and lascivious acts committed by an agent and employee of DePaul.

31. At all relevant times, the DePaul created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

32. At all relevant times, DePaul had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

33. As a direct and proximate result of DePaul's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

34. DePaul's acts and conduct shows a reckless or willful disregard for the safety and well-being of J.O.

WHEREFORE, Plaintiff demands judgment against DePaul for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(against the Diocese)

35. Plaintiff repeats and realleges Paragraphs 1 through 25 above.

36. At all material times the Diocese, as principal, and DePaul, as agent, were in an agency relationship, such that DePaul acted on the Diocese's behalf, in accordance with the Diocese's instructions and directions on all matters, including those relating to clergy personnel. The acts and omissions of DePaul were subject to the Diocese's plenary control, and DePaul consented to act subject to the Diocese's control.

37. At all material times, the Diocese and Plaintiff were in a special relationship in which the Diocese owed Plaintiff a duty of reasonable care.

38. At all material times, the Diocese and Dan Charcholla were in a special relationship of employer – employee, in which the Diocese owed a duty to control the acts and conduct of Diocese to prevent foreseeable harm.

39. The Diocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Diocese. The Diocese's duties encompassed the retention and supervision of Dan Charcholla and otherwise providing a safe environment for Plaintiff.

40. The Diocese breached these duties by failing to protect the minor J.O. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Diocese.

41. At all relevant times, the Diocese created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

42. At all relevant times, the Diocese had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

43. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

44. The Diocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of J.O.

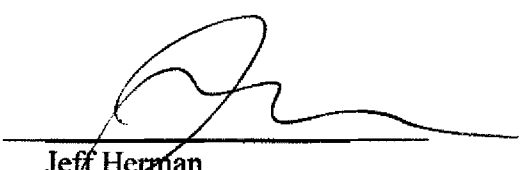
WHEREFORE, Plaintiff demands judgment against the Diocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
August 28, 2019

By: _____


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